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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,606

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EXAMINER

MUSTAFA, IMRAN K

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,606	Applicant(s) BAIJENS ET AL.	
	Examiner IMRAN MUSTAFA	Art Unit 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 13, 17-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 13, 17-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11, 13, 17, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell (US 6,708,100) in view of Engelman (US 6,233, 515).

As to claim 11 Russell discloses a single track vehicle (Column 3 lines 12-17) comprising:

a brake system configured to either stop or decelerate the single-track vehicle (Column 4 lines 12-24, Figure 4);

a brake control unit, that is configured to control the brake system (Column 5 lines 13-25), said brake control unit including a cruise control system that is configured to actively vary or limit a vehicle speed or vehicle acceleration of the single track vehicle (Column 4 lines 12-24, Column 5 lines 13-25, Figure 4).

a vehicle acceleration controller that is configured to adjust a desired vehicle acceleration of the single-track vehicle by an automatic intervention into the brake control of the single-track vehicle or driving engine control, or a combination thereof (Column 4 lines 12-25); and

Russell discloses off a longitudinal controller for actuating the vehicle acceleration according to a desired vehicle acceleration the current vehicle acceleration (Column 4 lines 12-25) and a current brake pressure (Column 4 lines 12-25, Column 5 lines 13-25).. Russell however does not explicitly disclose actuating the

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vehicle acceleration controller according to a current engine driving torque. Engelman however teaches of actuating a vehicle acceleration controller according to a current engine driving torque (Column 3 lines 20-56). According to KSR (G) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at he claimed invention.

As to claim 13 Russell discloses a single-track vehicle wherein the brake control unit is equipped with a vehicle speed controller for adjusting a desired vehicle speed by an automatic intervention into brake control and/or driving engine control (Column 4 lines Column 4 lines 51-67, Column 5 lines 13-25).

As to claim 17 Russell discloses a single-track vehicle wherein the cruise control system is selected from the group consisting of an adaptive cruise control system, an intelligent cruise control system and an autonomous intelligent control system (Column 4 lines 58-Column 5 lines 1-3)

As to claim 22 Russell discloses a single-track vehicle wherein the cruise control system includes a device for the automatic vehicle deceleration for stabilization of the vehicle (Column 4 lines 12-24, Figure 4)

3. Claim 18, 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Russell (US 6,708,100) in view of Engelman (US 6,233, 515) and in further view of Tellis (US 2003/0135318).

As to claim 18 Russell does not explicitly disclose of a single-track vehicle wherein the cruise control system includes a device for the vehicle hold assistance.

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Tellis however teaches of a device for vehicle hold assistance (Paragraph 32). It would have been obvious to have a device for vehicle hold assistance with the motivation of providing an enhanced driving experience for the driver.

As to claim 19 Russell does not explicitly disclose a single-track vehicle characterized in that the means for the active driver assistance includes a device for stop-and-go control. Tellis however discloses a device for stop-and-go control (Paragraph 9). It would have been obvious to have a device for stop and go control with the motivation of providing an enhanced driving experience in traffic situations.

4. Claims 20, 21 rejected under 35 U.S.C. 103(a) as being anticipated by Russell (US 6,708,100) in view of Engelman (US 6,233, 515) and in further view of Mattes (US 2004/0153217).

As to claim 20 Russell does not explicitly disclose of a device for conditioning of the braking system. Mattes teaches of a vehicle wherein the cruise control system includes a device for the automatic conditioning of the brake system depending on the risk potential (Abstract, Figures 1-3, Paragraph 12, 13). It would have been obvious to condition the brake system with the motivation of providing more effective braking.

As to claim 21 Mattes teaches of a vehicle wherein the cruise control system includes a device for the automatic 'braking to become dry' of brake discs of the brake system (Abstract, Figures 1-3, Paragraph 12, 13). It would have been obvious to condition the brake system with the motivation of providing more effective braking.

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5. Claim 24 are rejected under 35 U.S.C. 103(a) as being anticipated by Russell (US 6,708,100) in view of Sielagoski(US 2001/0007966)

As to claim 24 Russell discloses a single-track vehicle comprising:

a brake system configured to stop or decelerate the single-track vehicle (Column 4 lines 12-24, Figure 4);

a brake control unit configured to control the brake system (Column 4 lines 12-24, Figure 4); and

a cruise control system configured to cooperate with the brake control unit to actively vary or limit a vehicle speed or vehicle acceleration(Column 4 lines 12-24, Figure 4),

Russell does not explicitly disclose of a cruise control system including a device for automatic vehicle deceleration to prevent the vehicle from veering off-course upon cornering at an excessive speed. Sielagoski however teaches of a cruise control system including a device for automatic vehicle deceleration to prevent the vehicle from veering off-course upon cornering at an excessive speed (Paragraph 5). According to KSR (G) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at he claimed invention.

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being anticipated by Russell (US 6,708,100) in view of Boll(US 6,679,810)

As to claim 25 discloses a single-track vehicle comprising:

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a brake system configured to stop or decelerate the single-track vehicle (Column 4 lines 12-24, Figure 4);

a brake control unit configured to control the brake system (Column 4 lines 12-24, Figure 4);

a cruise control system configured to cooperate with the brake control unit to actively vary or limit vehicle speed or vehicle acceleration (Column 4 lines 12-24, Figure 4)

Russell does not explicitly disclose of a hill start device. Boll however teaches hill start assist device configured engage the brake system to prevent the vehicle from rolling backwards after the vehicle is stopped and a drive away release device configured to disengage the brake system once the vehicle driver resumes driving (Column 8 lines 50-column 9 lines 1-15). According to KSR (G) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at he claimed invention.

The statements of intended use or field of use "for" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

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A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2d 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Response to Arguments

Applicant's arguments with respect to claims 11, 13, 17-22, 24-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IMRAN MUSTAFA whose telephone number is (571)270-1471. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, Alt Fri, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

7/19/2009

/I. M./
Examiner, Art Unit 3663

/Jack W. Keith/

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Supervisory Patent Examiner, Art Unit 3663